UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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HOAI NGO,

Plaintiff,

-against-

OPPENHEIMER & CO. INC.,

Defendant.

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COMPLAINT

PLAINTIFF DEMANDS A TRIAL BY JURY

Plaintiff Hoai Ngo ("Ngo" or "plaintiff"), by his attorneys, Vladeck, Raskin & Clark, P.C., complaining of defendant Oppenheimer & Co. Inc. ("Oppenheimer," the "Firm" or "defendant") alleges as follows:

NATURE OF CLAIMS

1. Ngo was a top analyst at Oppenheimer, a financial services company. He was consistently the highest paid analyst in his group and, beginning in 2013, Oppenheimer elevated Ngo to a management-level position. His future at the Firm appeared bright. Until, that is, Ngo disclosed to Oppenheimer that he is gay and that he and his partner were having a baby via surrogacy. Ngo quickly learned that Oppenheimer did not apply its leave policies equally to men and women. Despite routinely permitting female employees up to 12 weeks of job-protected leave for the birth or adoption of a child, Ngo's managers, including Robert Lowenthal ("Lowenthal"), made clear that Ngo should cut short his parental leave. Ngo's situation only got worse when he suffered a life-threatening brain aneurysm, which required him to extend his time out of the office. Upon Ngo's return to work, Oppenheimer demoted him, cut his pay and, ultimately, fired him.

2. Ngo brings this action to remedy discrimination on the basis of sex and disability and retaliation for requesting a reasonable accommodation, in violation of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq. ("Title VII"); the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101 et seq. ("ADA"); the New York State Human Rights Law, Executive Law § 290 et seq. (the "Executive Law"); and the Administrative Code of the City of New York § 8-107 et seq. (the "City Law").

3. Ngo also brings this action to remedy defendant's violations of the Family and Medical Leave Act, 29 U.S.C. § 2601 et seq. ("FMLA").

4. Ngo seeks injunctive and declaratory relief, compensatory, punitive and liquidated damages, and other appropriate equitable and legal relief pursuant to Title VII, the ADA, the FMLA, Executive Law, and the City Law.

JURISDICTION AND VENUE

5. The Court has jurisdiction over the Title VII, ADA and FMLA claims pursuant to 29 U.S.C. § 2617(a)(2), 28 U.S.C. § 1331 and 42 U.S.C. § 2000e-5(f)(3).

6. The Court has jurisdiction over the Executive Law and City Law claims pursuant to 28 U.S.C. § 1367.

7. On January 24, 2017, Ngo received a Notice of Dismissal and Right to Sue from the United States Equal Opportunity Commission (the "EEOC").

8. Pursuant to § 8-502(c) of the City Law, plaintiff will cause to be served a copy of the Complaint on the City of New York Commission on Human Rights and the City of New York Corporation Counsel.

9. Venue is proper in this District pursuant to 28 U.S.C. § 1391 and 42 U.S.C. § 2000e-5(f)(3) because the unlawful practices complained of herein occurred within the Southern District of New York.

PARTIES

10. Ngo is a resident of New York. He worked for Oppenheimer from August 2009 until the Firm fired him on June 30, 2016.

11. On information and belief, Oppenheimer is a corporation organized under the laws of the State of New York with headquarters in New York City.

FACTUAL ALLEGATIONS

Background

12. Ngo has worked in the banking and finance industry for more than 15 years.

13. Ngo earned a Bachelor of Arts degree from the University of California at San Diego in 1994 and a Juris Doctorate degree from Tulane Law School in 1998. Although he successfully passed the New York State Bar exam, he elected to pursue a career in finance.

14. Before joining Oppenheimer, Ngo worked for several large investment banks and investment firms, including, JPMorgan Chase Securities Inc., Bear Stearns and RBS Greenwich Capital. Ngo's excellent performance earned him steady promotions and significant raises.

15. Ngo has three professional licenses with the National Association of Securities Dealers.

Ngo's Successful Career at Oppenheimer

16. Oppenheimer is a New York-based financial services and investment banking firm. Oppenheimer provides a full range of wealth management, securities brokerage,

capital markets and investment banking services to high-net-worth individuals, families, executives, businesses and institutions. Oppenheimer is a registered broker-dealer and investment advisory firm.

17. Ngo began his employment at Oppenheimer in August 2009. Oppenheimer hired him as a Director and Senior Analyst in High Yield Research. The High Yield Research group is part of the Taxable Fixed Income department.

18. When Oppenheimer hired Ngo, his manager was Todd Morgan ("Morgan"), the then-Head of the High Yield Research group. Morgan reported to Lowenthal, the current Senior Managing Director of Fixed Income, a member of the Firm's Board of Directors, and the son of the Chief Executive Officer. Moreover, Jane Ross ("Ross"), who was then, and remains, the Head of High Yield Sales & Trading, effectively ran the High Yield group.

19. As a Senior Analyst, Ngo conducted financial research and provided formal investment recommendations to clients, which included successful asset management firms and hedge funds.

20. Ngo consistently received positive feedback from his managers and earned significant bonuses. In recognition of Ngo's exemplary performance, he was generally the highest paid analyst within his group.

21. For example, in January 2011, Ngo received the highest performance evaluation in his group and, as a result, the Firm awarded him the highest bonus of any analyst in the amount of $125,000. Ngo's total compensation for 2010 was approximately $225,000.

22. In or around February 2012, Ngo received an employment offer from a competitor. Contrary to Oppenheimer's standard practice, the Firm countered the bid so that Ngo

would not leave. Oppenheimer offered to significantly increase Ngo's compensation and, as a result, he agreed to stay at the Firm. Lowenthal raised Ngo's annual salary from $100,000 to $150,000, and promised to match the competitor's total compensation offer when Oppenheimer paid bonuses in February 2013. As a result, for 2012 Ngo earned $400,000.

23. Due to Ngo's success, the Firm promoted Ngo several times. For example, Oppenheimer promoted Ngo to Executive Director in 2011.

24. In or around October 2013, Ngo's then-manager, Morgan, left Oppenheimer to join another investment bank. Oppenheimer promoted Ngo to Managing Director. Oppenheimer also elevated Ngo and another recently-promoted Managing Director, Colleen Burns ("Burns"), to Co-Heads of the High Yield Research group.

25. As Co-Head of the group, Ngo, along with Burns, supervised five Senior Analysts and Associates. In addition, Ngo maintained his own sector coverage. Ngo was also responsible for sending out, under his name, the "Morning Blast," which is an electronic newsletter relied on by over 1,000 asset managers and hedge fund clients showcasing the Firm's research arm. Ngo also had compliance responsibilities, such as supervising approval of published research and working with the compliance department concerning changes to regulatory protocols.

26. In or around February 2014, Ngo's compensation increased again to $410,000, plus, for the first time, an award of stock options. Ngo remained the highest paid analyst within the High Yield Research group. According to Lowenthal, Oppenheimer paid Ngo more than Burns due to his greater contribution as Co-Head of the group.

Oppenheimer's Leave Policies

27. Oppenheimer maintains parental leave policies that track federal and local laws. In particular, the Firm provides 12 weeks of job-protected leave for the birth or adoption of a child. The policy is purportedly sex neutral, meaning that both men and women should be entitled to the same parental leave.

28. Oppenheimer promises to return the employee to the same or equivalent position held before taking leave, with equivalent pay, benefits and other employment terms.

29. Oppenheimer has routinely provided female employees within the Fixed Income division with the full 12 weeks of job-protected leave for the birth or adoption of a child.

Ngo's Parental Leave

30. On May 12, 2014, Ngo told Lowenthal that he is gay and that he and his partner were having a baby via surrogacy in California. Ngo asked Lowenthal about his options for taking paternity leave. Lowenthal directed Ngo to speak to Human Resources about parental leave and to Ross about work coverage during Ngo's absence.

31. That same day, May 12, 2014, Ngo discussed his leave options with Lenore Denys ("Denys") of Human Resources, who told him that Oppenheimer did not have a separate paternity leave policy. Rather, she stated that Ngo "may be entitled to 12 weeks of unpaid leave" and referred him to the Employee Handbook. Ngo confirmed with two female colleagues that, in fact, the Firm provided each of them with 12 weeks of leave and paid them for portions of the leaves.

32. When Ngo met with Ross, however, she attempted to dissuade Ngo from taking paternity leave. Ross emphasized that she did not use her full 12 weeks of maternity leave when she had her two children. She also said that women make a mistake when taking so much

time off after their children are born because kids need their mothers more during their teenage years. Ngo told Ross that he was entitled to take 12 weeks of leave and that, as a new parent, he wanted the option to take the full leave. Ross was not sympathetic to Ngo's proposal. Concerned that Ross would get angry with Ngo for taking his full leave, he left open the possibility that he would return before 12 weeks. Ngo was nonetheless concerned that Ross was treating him differently since Ross had recently approved a full 12-week leave for one of his female colleagues.

33. During their meeting, Ross and Ngo also discussed work coverage while he was on leave. Ngo proposed that Burns run the group while he was not in the office, which Burns agreed to do. Ross rejected Ngo's suggestion. She did not believe that Burns was capable of running the group in Ngo's absence and wanted to show the market continuity in leadership. Consequently, Ross wanted to continue to send the "Morning Blast" email under Ngo's name and directed that he continue to provide supervisory review for all research that the group distributed. Upon information and belief, Oppenheimer, and Ross in particular, did not require Ngo's female colleagues to work during their maternity leaves.

34. On June 20, 2014, Ngo flew to California to await the birth of his child. Lowenthal arranged for a company-issued laptop and remote access for Ngo to work from California prior to the start of his leave. Prior to Ngo's departure, Ngo advised Lowenthal that he would wait until after the baby was born before making a proposal regarding the duration of his leave. Lowenthal did not raise any concerns or objections about Ngo's potential return date. To the contrary, Lowenthal told Ngo to work out his leave with Ross and Burns, and to make sure his absence was covered.

35. From June 21 to June 23, 2014, Ngo worked remotely in California before the birth of his child.

36. On June 24, 2014, Ngo's child was born and he began his parental leave.

37. However, Ngo's daughter was born early and, as a result, her pediatrician recommended that she not fly to New York until after her first round of immunization shots were completed, which would be several weeks.

38. On or about July 13, 2014, Ngo sent an email to Ross stating that he would not be able to return to New York until early August and that he planned to return to the office on August 25, 2014, after only two months of parental leave. Ngo was concerned about retaliation for taking his full 12-week entitlement given Ross's prior attempts to dissuade him from taking parental leave.

39. On July 14, 2014, Ross replied to Ngo's email and agreed to "see [him] sometime in August." Moreover, Ross made it clear that she expected Ngo to work while on leave. In particular, she asked Ngo how he planned to handle the second quarter earnings reports while he was away, which was a project that would require a significant amount of time and effort to complete. It is common for employees responsible for quarterly earnings reports to work more than 12 hours per day.

40. On July 16, 2014, Ngo called Burns, who told him that both Lowenthal and Ross were upset about the length of his leave. Burns suggested that Ngo call Lowenthal.

41. The next day, Ngo spoke to Lowenthal by phone. Ngo explained to Lowenthal that Ngo was unable to return to work for several weeks because the doctor did not want his daughter to fly until she had received immunization shots. Ngo offered to provide Lowenthal with a doctor's letter. Because Ngo understood that Lowenthal was angry about his

having taken parental leave, Ngo felt compelled to explain to Lowenthal that he had worked out a schedule so that he did not have to take his full allotment of 12 weeks' leave. Lowenthal stated that Ngo should "do what [he] need[ed] to do" and emphasized the Firm did not have a paternity leave policy. Presumably as punishment for Ngo's leave, Lowenthal stated that Oppenheimer was going to remove Ngo's name from the "Morning Blast" email.

42. Afraid that Oppenheimer would retaliate further, between mid-July and mid-August 2014, Ngo routinely checked in with the office about work matters.

43. On July 18, 2014, two days after Ngo learned that Lowenthal was angry at him for taking leave, Lowenthal sent Ngo a letter expressing his frustration.[1] While Lowenthal began the letter by congratulating Ngo on the birth of Ngo's daughter, he quickly turned to criticizing Ngo for the length of Ngo's leave. Lowenthal wrote that it was his "understanding" that Ngo would only take two weeks of parental leave "with the possibility of extending that leave for an additional two weeks, depending on the health and needs of the baby." Lowenthal was, according to the letter, "willing to accommodate [Ngo's] initial request," even though "Oppenheimer does not have a paid paternity leave policy." Lowenthal then criticized Ngo for requesting leave "through the end of August." Lowenthal thus made the decision to give all of Ngo's responsibilities as Co-Head of the group to Burns in Ngo's absence.

Ngo's Medical Leave

44. On August 16, 2014, nine days before Ngo was set to return to work, he suffered a brain aneurysm. A blood vessel had burst in Ngo's brain causing him to become disoriented. Ngo had emergency surgery to repair the blood vessel and was in intensive care for three weeks for recovery and to monitor for a second bleed. According to Ngo's doctor, about 50

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[1] Ngo did not see this letter until a couple of months later. Lowenthal only sent the letter to Ngo by email; Lowenthal did not mail a copy to Ngo's home.

percent of patients with a subarachnoid hemorrhage die and there was a risk of a potential re-bleed. Indeed, Ngo's father died from an aneurism after a re-bleed. As a preventive measure, Ngo's neurologist performed brain surgery to seal the brain aneurism.

45. On August 17, 2014, the day after Ngo suffered the aneurism, his partner called Oppenheimer to advise Lowenthal of Ngo's condition. Oppenheimer arranged to have medical disability forms sent to Ngo and his partner the next day. They completed and returned the forms immediately.

46. On or about October 9, 2014, Ngo sent an email to Lowenthal proposing a return date of November 3, 2014. Ngo's doctor recommended that date to ensure that he had proper physical therapy and rest from the operation. Indeed, after the operation, Ngo was unable to walk and needed physical therapy to recover. Lowenthal agreed to the return date.

Oppenheimer Demotes Ngo Upon His Return from Leave

47. On November 3, 2014, Ngo returned to the office and met with Lowenthal. Lowenthal made clear that he was disappointed that Ngo had taken leave. Lowenthal told Ngo that circumstances had changed while Ngo was away from the office, that Ngo had been "unavailable" during an "important time," and that Ngo could not expect to have the same job upon his return. Lowenthal emphasized, once again, that Oppenheimer did not have a paternity leave policy. Lowenthal stated that he was removing some of Ngo's responsibilities and that Ngo was no longer in charge of the compliance part of the business. Ngo asked if that meant that Lowenthal was removing Ngo as Co-Head of the group. Lowenthal refused to answer Ngo's question and, instead, told Ngo that he should "just do [his] job." Ngo told Lowenthal that Ngo was disappointed with Lowenthal's decision and that Ngo was willing and able to assume his responsibilities as Co-Head of the group.

48. The next day, on November 4, 2014, Ngo met again with Lowenthal to request clarification regarding Ngo's status as Co-Head of the group. During this meeting, Lowenthal said that Ngo was no longer the Co-Head of the group and that the Firm had appointed Burns as the sole group Head. Lowenthal explained that he did not realize that Ngo would be out of the office longer than three or four weeks. Ngo asked Lowenthal if Ngo should be concerned about his job. Lowenthal refused to give Ngo any assurances. Rather, as Lowenthal had done the previous day, Lowenthal directed Ngo to just do his job.

49. Lowenthal's claim that Ngo had not kept the Firm informed of the terms of his leave was false. As explained above, Ngo gave Lowenthal and Ross more than 30 days' notice that Ngo would be taking parental leave. On July 13, 2014, less than three weeks into Ngo's leave, Ngo informed Ross by email that his daughter had not yet been cleared to fly and that Ngo would return to the office by August 25. On August 17, the day after Ngo suffered an aneurism, his partner told Lowenthal that Ngo would not be able to return to work on August 25. On October 9, after having brain surgery and being in intensive care for three weeks, Ngo sent an email to Lowenthal letting him know that Ngo could return to the office on November 3. In short, Oppenheimer was made aware, at all relevant times, of the dates of Ngo's parental leave and subsequent medical leave.

50. On November 6, 2014, Ross, for the first time, sent an email to her sales staff announcing that Oppenheimer had appointed Burns as the sole group Head.

51. Shortly thereafter, in February 2015, only a few months after returning from leave, Oppenheimer slashed Ngo's annual bonus by $160,000. Burns explained that Ngo's reduced bonus was based on his "contribution" to the Firm in 2014, which Ngo understood to

mean that he was being penalized for taking parental leave and seeking additional leave as a medical accommodation.

52. This trend continued the following year. In February 2016, Oppenheimer paid Ngo a bonus that was $90,000 less than he received prior to taking leave.

53. On or about June 30, 2016, Oppenheimer fired Ngo. Human Resources and Burns told Ngo that his dismissal was unrelated to his performance. They claimed Oppenheimer eliminated his position due to budget cuts.

54. On information and belief, Oppenheimer's explanation is a pretext intended to cover up its unlawful actions, including its discrimination and retaliation against plaintiff. On information and belief, Ngo was the only employee within Fixed Income that the budget cuts purportedly affected. No other employees within Fixed Income were laid off or otherwise fired around this time for financial reasons. Nor to Ngo's knowledge was his discharge part of a broader Firm-wide reduction in force. Moreover, in or around May 2016, Oppenheimer hired a new senior analyst for the group. If the Firm was suffering financially, it would not have expanded Ngo's group only a few months earlier.

55. Later, after Ngo raised questions about his dismissal, Oppenheimer shifted its justification for firing him. This time Human Resources and Burns told Ngo that the Firm actually eliminated his position because equity research coverage was no longer needed for his sectors. This explanation makes no sense. There had not been equity research coverage for Ngo's sectors for at least five years.

FIRST CAUSE OF ACTION
(FMLA)

56. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 55 of this Complaint as if set forth herein.

57. By the acts and practices described herein, defendant interfered with, restrained and denied plaintiff his rights under the FMLA, and retaliated against him for exercising those rights, in violation of the FMLA, 29 U.S.C. §§ 2612(a), 2614(a)(1), and 2615(a)(1).

58. As a result of defendant's discriminatory acts, plaintiff has suffered and will continue to suffer irreparable injury, emotional distress, and other monetary damages unless and until this Court grants relief.

SECOND CAUSE OF ACTION
(TITLE VII - DISCRIMINATION)

59. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 58 of this Complaint as if fully set forth herein.

60. By the acts and practices described above, defendant discriminated against plaintiff in the terms and conditions of his employment on the basis of his sex in violation of Title VII.

61. Defendant knew that its actions constituted unlawful discrimination under Title VII and/or acted with malice or reckless indifference to plaintiff's statutorily protected rights.

62. As a result of defendant's discriminatory acts, plaintiff suffered and will continue to suffer irreparable injury, monetary damages, mental anguish, emotional distress, humiliation, and damage to his reputation unless and until this Court grants relief.

THIRD CAUSE OF ACTION
(ADA - DISCRIMINATION)

63. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 62 of this Complaint as if fully set forth herein.

64. By the acts and practices described above, defendant discriminated against plaintiff in the terms and conditions of his employment on the basis of his disability in violation of the ADA.

65. Defendant knew that its actions constituted unlawful discrimination under the ADA and/or acted with malice or reckless indifference to plaintiff's statutorily protected rights.

66. As a result of defendant's discriminatory acts, plaintiff suffered and will continue to suffer irreparable injury, monetary damages, mental anguish, emotional distress, humiliation, and damage to his reputation unless and until this Court grants relief.

FOURTH CAUSE OF ACTION
(ADA - RETALIATION)

67. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 66 of this Complaint as if fully set forth herein.

68. By the acts and practices described above, defendant retaliated against plaintiff for requesting an accommodation in violation of the ADA.

69. Defendant knew that its actions constituted unlawful discrimination under Title VII and/or acted with malice or reckless indifference to plaintiff's statutorily protected rights.

70. As a result of defendant's discriminatory acts, plaintiff suffered and will continue to suffer irreparable injury, monetary damages, mental anguish, emotional distress, humiliation, and damage to his reputation unless and until this Court grants relief.

FIFTH CAUSE OF ACTION
(EXECUTIVE LAW - DISCRIMINATION)

71. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 70 of this Complaint as if set forth herein.

72. By the acts and practices described above, defendant discriminated against plaintiff in the terms and conditions of his employment on the basis of his sex and disability in violation of the Executive Law.

73. As a result of defendant's discriminatory acts, plaintiff has suffered and will continue to suffer irreparable injury, emotional distress, and other compensable damage unless and until this Court grants relief.

SIXTH CAUSE OF ACTION
(EXECUTIVE LAW - RETALIATION)

74. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 73 of this Complaint as if set forth herein.

75. By the acts and practices described above, defendant retaliated against plaintiff for requesting a reasonable accommodation in violation of the Executive Law.

76. Plaintiff is now suffering irreparable injury and monetary damage from defendant's retaliatory conduct and will continue to do so unless and until the Court grants relief.

EIGHTH CAUSE OF ACTION
(CITY LAW - DISCRIMINATION)

77. Plaintiff repeats and realleges each and every allegation in paragraphs 1 through 76 of this Complaint as if set forth herein.

78. Defendant discriminated against plaintiff in the terms and conditions of his employment based on his sex and disability in violation of the City Law.

79. As a result of defendant's discriminatory acts, plaintiff has suffered and will continue to suffer irreparable injury, emotional distress, and other compensable damage unless and until this Court grants relief.

NINTH CAUSE OF ACTION
(CITY LAW - RETALIATION)

80. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 79 of this Complaint as if set forth herein.

81. By the acts and practices described above, defendant retaliated against plaintiff for requesting a reasonable accommodation in violation of the City Law.

82. Plaintiff is now suffering irreparable injury and monetary damage from defendant's retaliatory conduct and will continue to do so unless and until the Court grants relief.

PRAYER FOR RELIEF

WHEREFORE, plaintiff respectfully requests that this Court enter a Judgment:

(a) declaring the acts and practices complained of herein to be violations of Title VII, the ADA, the FMLA, the Executive Law, and the City Law;

(b) enjoining and permanently restraining these violations of Title VII, the ADA, the FMLA, the Executive Law, and the City Law;

(c) directing defendant to take such affirmative steps as are necessary to ensure that the effects of these unlawful practices are eliminated and do not continue to affect plaintiff's employment opportunities;

(d) directing defendant to place plaintiff in the position he would have occupied but for defendant's discriminatory and retaliatory treatment of him, and making him whole for all earnings and other benefits he would have received but for defendant's discriminatory and retaliatory treatment, including but not limited to wages, pension, and other lost benefits;

(e) directing defendant to pay plaintiff an additional amount as liquidated damages for violations of the FMLA;

(f) directing defendant to pay plaintiff compensatory damages, including damages for emotional distress, humiliation, and pain and suffering;

(g) directing defendant to pay plaintiff additional amounts as punitive damages;

(h) awarding plaintiff such interest as is allowed by law, and damages for any adverse tax consequences stemming from an award;

(i) awarding plaintiff the costs of this action, together with reasonable attorneys' fees, as provided by Title VII, the ADA, the FMLA, and by the City Law; and

(j) awarding such other and further relief as this Court deems necessary and proper.

DEMAND FOR TRIAL BY JURY

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, plaintiff demands a trial by jury in this action.

Dated: New York, New York
March 8, 2017

VLADECK, RASKIN & CLARK, P.C.

By:________________________

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